

EXHIBIT 25

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 -----

4 In Re:

5 Bair Hugger Forced Air Warming

6 Products Liability Litigation

7

8 This Document Relates To:

9 All Actions MDL No. 15-2666 (JNE/FIM)

10 -----

11

12 DEPOSITION OF MARK J. SCOTT

13 VOLUME I, PAGES 1 - 297

14 MARCH 2, 2017

15

16

17 (The following is the deposition of MARK J.

18 SCOTT, taken pursuant to Notice of Taking Deposition,

19 via videotape, at the offices of Ciresi Conlin

20 L.L.P., 225 South 6th Street, Suite 4600, in the City

21 of Minneapolis, State of Minnesota, commencing at

22 approximately 9:00 a.m., March 2, 2017.)

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1 APPEARANCES:

2 On Behalf of the Plaintiffs:

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ALSO PRESENT:

Ryan M. Stirewalt, Videographer

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1 PROCEEDINGS

2 (Witness sworn.)

3 MARK J. SCOTT,

4 Called as a witness, being first

5 duly sworn, was examined and

6 testified as follows:

7 EXAMINATION

8 BY MR. ASSAAD:

9 Q. Please state your name.

10 A. Mark Scott.

11 Q. And you're a current employee of 3M?

12 A. I am.

13 Q. And what is your current business address?

14 A. I'm sorry. We refer to it as 4E, which is

15 our fourth floor of Building 275 in Maplewood,

16 Minnesota.

17 Q. Any street address?

18 A. I think it's 2100 Conway Avenue North.

19 Q. You say Building 4E?

20 A. Building 275, 4E.

21 Q. And what's "4E"?

22 A. It's the fourth floor in the east side.

23 Q. Is that a certain division, the 4E, is it a

24 certain division? Is it Station 4E?

25 A. Within 4E is the Infection Prevention

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15:06:56 1 Yeah. It's an email from Gary, myself and
 15:07:02 2 Hamid, and Dominique.
 15:07:11 3 Q. In the middle is an email from you that
 15:07:13 4 states: "Sorry also for the delay. Our filter
 15:07:16 5 description is a 'high efficiency, 0.2 micron filter'.
 15:07:23 6 It does not carry the HEPA designation. This is
 15:07:25 7 principally due to the added cost."
 15:07:28 8 Did I read that correctly?
 15:07:30 9 A. You have.
 15:07:31 10 Q. So isn't the real reason why you don't use
 15:07:32 11 the HEPA filter is because of the added cost?
 15:07:37 12 A. I princi --
 15:07:37 13 One of the reasons why we've elected to use
 15:07:40 14 the filter we do is because of its cost structure.
 15:07:44 15 Q. Well when I --
 15:07:44 16 A. HEPA filters tend to cost more, and that
 15:07:47 17 would be a cost the customer would have to incur.
 15:07:50 18 Q. How would the -- The cost --
 15:07:52 19 The customer doesn't pay for the warming --
 15:07:54 20 A. They pay for the filters to replace, over
 15:07:59 21 time.
 15:07:59 22 Q. So now there's two reasons that you do not
 15:08:02 23 use a HEPA filter. One is because the filter's just
 15:08:06 24 to protect the internal components', and two, there's
 15:08:09 25 an added cost to use the HEPA filter.

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15:08:10 1 MS. AHMANN: Object, form.
 15:08:12 2 A. Among the reasons, yes.
 15:08:13 3 Q. Well what other reasons are there?
 15:08:16 4 A. I'm not going to speak to that. The filter
 15:08:18 5 is specified by our engineering department.
 15:08:21 6 Q. Yeah, but you're the one that says "this is
 15:08:23 7 principally due to the added cost." Who told you
 15:08:25 8 that?
 15:08:27 9 A. We had looked at the cost of -- just for
 15:08:31 10 benchmarking purposes, to understand what a HEPA
 15:08:35 11 filter costs because our competition was offering
 15:08:37 12 that, to see if there was some information we can
 15:08:40 13 glean from that. That's where this came from.
 15:08:44 14 Q. Then you go on. "We have studied this, as
 15:08:46 15 well as others in independent studies that have found
 15:08:49 16 that our current level of filtration is very
 15:08:52 17 effective."
 15:08:52 18 Did I read that correctly?
 15:08:53 19 A. You have.
 15:08:53 20 Q. What studies are you referring to?
 15:08:57 21 A. At the time of this, the Zink study.
 15:09:00 22 Q. The Zink study didn't study the filter.
 15:09:04 23 A. I'd have to look back at the documents, but
 15:09:08 24 -- or the studies themselves.
 15:09:09 25 Q. What independent studies?

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15:09:11 1 A. I'd have to look back at the studies.
 15:09:13 2 Q. Well where could I find them, because I have
 15:09:16 3 not found any independent studies on filtration back
 15:09:18 4 in 2009.
 15:09:19 5 A. I may have misspoke.
 15:09:21 6 Q. In this email?
 15:09:22 7 A. 2009, yeah. And I see 2009, yeah.
 15:09:39 8 Q. And you say the "filtration is very
 15:09:40 9 effective." Very effective for what purpose?
 15:09:44 10 A. Protecting the warming unit, I imagine.
 15:09:47 11 Q. Not to prevent contaminants to get into the
 15:09:51 12 warming unit; correct? Like bi -- Like bacteria to
 15:09:53 13 get into the warming unit.
 15:09:56 14 MS. AHMANN: Object to the form.
 15:09:58 15 A. Like gauze, other material a .2 micron
 15:10:05 16 filter can capture.
 15:10:07 17 Q. You agree that the .2 micron filter is not
 15:10:09 18 going to capture bacteria going through it; correct?
 15:10:13 19 A. I'm not sure what a .2 micron filter would
 15:10:17 20 capture as it relates to bacteria size.
 15:10:21 21 Q. Well you say it's "very effective." What do
 15:10:23 22 you mean by "very effective" if you don't know what
 15:10:25 23 it's going to catch?
 15:10:26 24 A. It's a very general statement, but yes.
 15:10:29 25 Q. What do you mean it's a general statement?

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15:10:30 1 You say it's "very effective." What's general about
 15:10:30 2 that statement?
 15:10:34 3 A. That it's very effective. I guess --
 15:10:41 4 Q. Well can we say that the Bair Hugger's
 15:10:43 5 warming is very effective is a general statement?
 15:10:46 6 A. When you --
 15:10:47 7 When we put it in that context it is -- they
 15:10:49 8 are general statements, yeah.
 15:10:51 9 Q. So -- So even though you have independent
 15:10:53 10 studies that have found that our current level of
 15:10:56 11 filtration is very effective, you're -- that's the
 15:10:58 12 same type of statement that says the Bair Hugger --
 15:11:00 13 there's general studies that say the Bair Hugger's
 15:11:02 14 very effective. It's just a general statement.
 15:11:04 15 A. General statement.
 15:11:04 16 Q. Okay.
 15:11:04 17 MS. AHMANN: Object to the form.
 15:11:06 18 A. The --
 15:11:07 19 I think Gary clarifies that we've got a long
 15:11:10 20 experience with clinical research and what-have-you,
 15:11:13 21 but that's said.
 15:11:15 22 Q. I mean you'll agree with me that your --
 15:11:16 23 your patient warming competitor, Stryker, has a
 15:11:21 24 product in which they advertise a HEPA filter and
 15:11:25 25 saying that it's better than 3M because it has a HEPA

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